

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

Kenneth Irish, Denise Marshall, Allen
Moore and Scott Stillwell, on behalf of
themselves and on behalf of all others
similarly situated, a class action,

Civil File No. 08-469

Plaintiffs,

v.

**DEFENDANTS' MOTION TO
DISMISS**

BNSF Railway Company, Burlington
Northern Santa Fe Corporation, William
Barbee, Francis A. Weber, John Doe #1,
John Doe #2, ABC Insurance Company
and DEF Insurance Company,

Defendants.

Defendants BNSF Railway Company, Burlington Northern Santa Fe Corporation,
William Barbee and Francis Weber submit this motion to dismiss pursuant to Rule 12 of the
Federal Rules of Civil Procedure. The basis for this motion is that plaintiffs' claims are
preempted by federal and state law and must be dismissed. This motion is based upon all
the files, records and proceedings herein, the memorandum of law filed in support of this
motion, and the arguments of counsel.

Dated: August 2, 2010

BRIGGS AND MORGAN, P.A.

By: s/ Timothy R. Thornton
Timothy R. Thornton (#109630)

2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
(612) 977-8400

**ATTORNEYS FOR BNSF RAILWAY
COMPANY, WILLIAM BARBEE
AND FRANCIS WEBER**